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8  
9 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

10 **COUNTY OF LOS ANGELES**

11 **TRACY GRANBERRY**, individually and on  
12 behalf of all others similarly situated,

13 Plaintiff,

14 vs.

15 **AZUSA PACIFIC UNIVERSITY**, a California  
16 Corporation,

17 Defendant.

**CASE NO. 19STCV28949**

**CLASS ACTION SETTLEMENT  
AGREEMENT**

1 This Class Action Settlement Agreement (“Settlement Agreement”) is made and entered into  
2 between Plaintiff Tracy Granberry (“Plaintiff” or “Class Representatives”) on the one hand, individually  
3 and on behalf of the Settlement Class (as defined below) and the State of California, by and through  
4 HammondLaw, P.C. (“Class Counsel”), and Defendant Azusa Pacific University (“Defendant” or “APU”)  
5 on the other hand subject to the approval of the Court, as provided below. This Settlement Agreement is  
6 intended by Plaintiff and Defendant to fully, finally, and forever resolve, discharge, and settle the Action  
7 (as defined below) and Released Claims (as defined below), upon and subject to the terms and conditions  
8 hereof, as follows:

9 **1. Definitions.**

10 As used herein, for the purposes of this Settlement Agreement only, the following terms will be  
11 defined as set forth below:

12 **1.1** “Action” refers to the civil action entitled *Tracy Granberry v. Azusa Pacific University* (Los  
13 Angeles County Superior Court Case No. 19STCV28949).

14 **1.2** “Class Counsel” refers to the attorneys of record for the Class Representative, *i.e.*,  
15 HammondLaw, P.C.

16 **1.3** “Class Member” refers to all current or former employees who performed the duties of an  
17 Adjunct Faculty member for APU in California during the Class Period.

18 **1.4** “Class Notice” refers to the form of direct-mail notices substantially in the form attached as  
19 **“Exhibit A,”** as may be modified by the Court.

20 **1.5** “Class Period” means August 19, 2015 through to the Preliminary Approval Date.

21 **1.6** “Complaint” refers to the operative First Amended Complaint in this Action, and any  
22 Complaints subsequently filed in this Action.

23 **1.7** “Court” refers to the California Superior Court for the County of Los Angeles.

24 **1.8** “Defendant” means Azusa Pacific University.

25 **1.9** “Escrow Account” refers to the interest bearing account into which APU will deposit an  
26 amount equal to the GSA, as that term is defined below.  
27  
28

1           **1.10** “Escrow Holder” refers to the company or financial institution entrusted to hold and  
2 distribute the funds deposited by APU pursuant to Section 4, below. The Escrow Holder shall be the  
3 Settlement Administrator or any financial institution selected by the Settlement Administrator.

4           **1.11** “Final Approval Hearing” refers to the hearing at which the Court will make a final  
5 determination whether the terms of the Settlement are fair, reasonable, and adequate for the Class and  
6 meet all applicable requirements for approval.

7           **1.12** “Final Approval Order” refers to the final order by the Court approving the Settlement  
8 following the Final Approval Hearing and entering final judgment.

9           **1.13** “Final Effective Date” refers to the date the Final Approval Order is entered if no objections  
10 to the Settlement are filed. If objections are filed and overruled, and no appeal of the Final Approval  
11 Order is filed, then the Final Effective Date will be sixty (60) calendar days following date the Final  
12 Approval Order is signed. If an appeal is taken from the Final Approval Order, then the Final Effective  
13 Date will be twenty (20) calendar days after the appeal is withdrawn or after an appellate decision  
14 affirming the Final Approval Order becomes final.

15           **1.14** “Gross Settlement Amount” (also referred to herein as “GSA”) refers to the maximum  
16 settlement payment of One Million One Hundred Thousand Dollars (\$1,100,000) Defendant will be  
17 obligated to make, except that Defendant shall bear, in addition, all employer-side payroll tax payments  
18 due and payable to federal and state tax authorities as a result of this Settlement. The GSA includes all  
19 payments made to Settlement Class Members, Service Award payment to Class Representative, all  
20 Settlement Administration Costs, the PAGA Award, escrow account costs, and attorneys’ fees and  
21 litigation costs and expenses to Class Counsel as approved by the Court.

22           **1.15** “Net Settlement Amount” (also referred to herein as “NSA”) is the GSA minus Court-  
23 approved attorney’s fees and litigation costs, Settlement Administration Costs, Court-approved  
24 Enhancement Award, and the LWDA’s share of the amount of the GSA allocated to PAGA Award. The  
25 NSA is the maximum amount that will be available for distribution to Settlement Class Members.

26           **1.16** “PAGA Award” refers to the Thirty Five Thousand Dollars (\$35,000.00) set aside for the  
27 PAGA penalty, with Nine Thousand Seven Hundred Forty Dollars (\$8,750.00) paid to the Class Members,  
28

1 and the remaining Twenty Six Thousand Two Hundred Fifty Dollars (\$26,250.00) payable to the Labor  
2 and Workforce Development Agency.

3 **1.17** "Parties" are Plaintiff and Defendant.

4 **1.18** "Released Claims" are those defined in Section 17, below.

5 **1.19** "Released Parties" include Azusa Pacific University and any parent, subsidiary, affiliate,  
6 predecessor or successor, and all agents, trustees, employees, officers, directors and attorneys thereof.

7 **1.20** "Request for Exclusion" refers to a request to be excluded from the Settlement, which must  
8 be made in writing in conformity with the requirements set forth in the Class Notice, the Court's order  
9 granting preliminary approval, and herein, and mailed to the Administrator and postmarked on or before  
10 the Response Deadline.

11 **1.21** "Response Deadline" refers to a date that is forty-five (45) calendar days after the date that  
12 the Class Notice is mailed to Class Members and is the deadline by which Class Members' Requests for  
13 Exclusion, disputes regarding Credits, and/or objections must be postmarked in order to be timely.

14 **1.22** "Enhancement Award" refers to a monetary award to the Plaintiff, in an amount not to exceed  
15 Seven Thousand Five Hundred Dollars (\$7,500), or other lesser amount as approved by the Court, for her  
16 services as Class Representative as described in Section 6, below, to be paid for from the Gross Settlement  
17 Amount, subject to approval by the Court, as described below.

18 **1.23** "Settlement Administrator" refers to CPT, Inc., the third-party administrator mutually  
19 selected by the parties, subject to approval by the Court, to perform the notice, claims administration, and  
20 distribution functions further described in this Settlement Agreement.

21 **1.24** "Settlement Administration Costs" refers to the costs and expenses of the administrator, to  
22 perform its tasks and duties as provided by this Settlement Agreement. These costs will be paid out of the  
23 GSA, in an amount not to exceed Thirty Thousand Dollars (\$30,000). However, in the event that the  
24 Escalator Clause in Section 23 is triggered, and the Settlement Administration Costs exceed \$30,000  
25 because of this, APU shall be responsible for paying the resulting increase in Settlement Administration  
26 Costs up to a maximum of an additional Five Thousand Dollars (\$5,000), with any remaining additional  
27 Settlement Administration Costs being paid out of the GSA.  
28

1           **1.25** “Settlement Class Member” refers to Class Members who do not request exclusion from the  
2 Settlement pursuant to Section 13, below.

3           **1.26** “Settlement Payment” refers to the amount paid to Settlement Class Member.

4           **2. Procedural History and Recitals.**

5           **2.1** On August 19, 2019, Plaintiff filed an action alleging putative class claims against Defendant  
6 for its (a) Failure to pay wages for all hours worked as required under Labor Code §§ 226.2 and 1194 and  
7 IWC Wage Order No. 4-2001 § 4; (b) failure to authorize and permit paid rest breaks and pay premium  
8 pay as required under Labor Code §§ 226.2 and 226.7 and Wage Order No. 4-2001, §§ 4, 12; (c) Failure  
9 to pay compensation due on discharge from employment in violation of Cal. Labor Code §§ 201-203; (d)  
10 failure to issue accurate itemized wage statements in violation of Cal. Labor Code §§ 226(a) and (e) and  
11 226.2; (e) failure to reimburse for business-related expenses in violation of Cal. Labor Code § 2802; (f)  
12 Unfair, unlawful, and/or fraudulent business practices in violation of Business & Professions Code §  
13 17200, *et seq.* (“UCL”). On November 14, 2019 Plaintiff filed a First Amended Complaint (“FAC”)  
14 adding a cause of action for Private Attorneys General Act (“PAGA”) penalties under Cal. Labor Code  
15 §§ 2698 *et seq.* for the Labor Code violations alleged in the Complaint as well as for APU’s failure to  
16 provide off-duty meal breaks as required under Labor Code § 512 and Wage Order No. 4-2001, § 11

17           **2.2** On March 3, 2020, the Parties participated in a mediation session with Tripper Ortman, an  
18 experienced mediator who has mediated numerous wage-hour class actions. As a result of the mediation  
19 session, the Parties were unable to reach a settlement but agreed to continue settlement discussions with  
20 the help of the mediator. Thereafter, on April 2, the parties reached an agreement in principle, and, on  
21 April 21 reached a final agreement on the only open issue, which is memorialized in this Settlement  
22 Agreement.

23           **2.3** The Parties jointly represent that this is a fair, reasonable, and adequate settlement and have  
24 arrived at this Settlement through arms-length negotiations, taking into account all relevant factors, present  
25 and potential.

26           **2.4** This Agreement is entered into solely for the purpose of compromising highly disputed  
27 claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant of  
28 liability or wrongdoing, or that the Action was not barred in its entirety by the ministerial exception.

1 Defendant makes no admission of liability or wrongdoing by virtue of entering into this Agreement.  
2 Additionally, Defendant reserves the right to contest any issues relating to class certification and liability  
3 if the Settlement is not approved. Defendant denies that it has engaged in any unlawful activity, has failed  
4 to comply with the law in any respect, has any liability to anyone under the claims asserted in the Action,  
5 or that but for the Settlement, a Class should be certified in the Action. This Settlement, and Plaintiff's  
6 and Defendant's willingness to settle the Action will have no bearing on, and will not be admissible in  
7 connection with, any litigation between the parties (other than in connection with this Settlement ).

8 **2.5** Class Counsel represent that they have thoroughly investigated the claims alleged against  
9 Defendant in the Action. Class Counsel represent that they have conducted their own investigation into  
10 the underlying facts, events, and issues related to the subject matter of this Action. Class Counsel represent  
11 that they have further undertaken an extensive analysis of the legal principles applicable to the claims  
12 asserted against Defendant, and the potential defenses thereto. Both Class Representative and Defendant  
13 have had an opportunity to evaluate their respective positions on the merits of the claims asserted.

14 **2.6** Class Counsel has also engaged in intensive arm's-length negotiations with counsel for  
15 Defendant with a view toward achieving substantial benefits for the Class while avoiding the cost, delay  
16 and uncertainty of further litigation, trial, and appellate review.

17 **2.7** As a consequence of said negotiations, and of Class Counsel's investigation, analysis and  
18 discovery, Plaintiff and Class Counsel determined to enter into this Settlement Agreement on the terms  
19 and conditions hereinafter set forth, believing such Settlement to be fair, reasonable and adequate and in  
20 the best interests of Plaintiff and the other members of the Class. Plaintiff and Class Counsel have  
21 determined to execute this Settlement Agreement and urge approval by the Court of the Settlement after  
22 considering (a) the substantial factual and legal defenses available to Defendant to the claims asserted in  
23 the Action, which render the outcome of the Action substantially uncertain; (b) the potential difficulties  
24 Plaintiff and Class Members would encounter in establishing the elements of their claims; (c) the  
25 substantial benefits made available to Class Members pursuant to the Settlement; (d) the fact that the  
26 Settlement ensures that Class Members will receive relief in the most expeditious and efficient manner  
27 practicable, and thus much sooner than would be possible were the claims to be litigated successfully  
28 through trial and appeal; and (e) the fact that the Settlement allows persons who would otherwise fall

1 within the definition of the Class, if they so desire, to opt out of the Action and individually pursue any  
2 Release Claims that he or she may have.

3       **2.8** As set forth above, without admitting any wrongdoing or liability, Defendant is willing to  
4 agree to the terms of the Settlement in order to settle, compromise, and fully resolve the Action and  
5 Released Claims (as defined below).

6       **3. Limitation on Effect of Settlement.**

7       The Settlement will not constitute, in this or any other proceeding, an admission of any kind by  
8 Defendant, including without limitation, that certification of a class is appropriate or proper or that  
9 Plaintiff could establish any of the requisite elements for class treatment of any of the claims in the Action.  
10 In the event that the Settlement is not finally approved, or the Settlement is otherwise terminated, and any  
11 class and representative action, which were certified for settlement purposes only, shall be vacated, and  
12 shall be of no force or effect whatsoever and shall not be admissible nor construed as an admission or  
13 concession of any kind by the Parties, in whole or part, and Defendant expressly reserves all rights to  
14 challenge certification of a class on all available grounds.

15       **4. Establishment of the GSA.**

16       Within ten (10) calendar days of the full execution of this Settlement Agreement, and provided  
17 that the Escrow Holder has established an Escrow Account, APU will deposit money in an amount equal  
18 to the GSA into the Escrow Account, which shall be administered by the Escrow Holder. The costs of  
19 setting up and maintaining the escrow account shall be included in the Settlement Administration costs.  
20 The GSA will be held in escrow by the Escrow Holder, and the Escrow Holder will not release any portion  
21 of the funds except to the extent authorized to do so under this Settlement Agreement.

22       The GSA will be held by the Escrow Holder, in the Escrow Account, and, will not release any  
23 portion of the funds unless and until the Settlement is finally approved and the Final Effective Date has  
24 passed. Fifteen (15) calendar days after the Final Effective Date, the Escrow Holder shall direct the  
25 release of funds from the Escrow Account in an amount equal to the amount owed to pay (1) Class  
26 Members per the terms of the final settlement agreement, as approved by the Court; and (2) court approved  
27 attorney's fees, costs, the PAGA payment, administration costs and incentive payments. In addition, the  
28 Escrow Holder shall release the interest accrued in the Escrow Account, which shall be distributed to

1 Settlement Class Members. All of these funds will be released into an interest-bearing account, through  
2 the Settlement Administrator. In addition, APU will separately transfer its share of the payroll taxes set  
3 out in section 10.2 into this interest-bearing account. Any interest born on this account will also be  
4 distributed to the Settlement Class.

5 If the Tolerance of Opt-Out Provision in Section 22 is exercised, or final approval is not obtained  
6 or is reversed on appeal, and therefore there is no Final Effective Date, then the Escrow Holder shall return  
7 the principal and all accrued interest, less the cost of setting up the Escrow Account, to APU within ten  
8 (10) calendar days after receipt of a written request from APU for the return, a copy of which shall be  
9 provided to Class Counsel at the time as sent to the Escrow Holder.

10 During the period the Escrow Holder has custody of the funds deposited by APU, and subject to  
11 the prior paragraph regarding the return of the funds, APU shall have no right to or ownership interest in  
12 the funds.

13 **5. Attorneys' Fees and Costs.**

14 Class Counsel shall request attorneys' fees up to 1/3 of the GSA, i.e., \$366,666.67, for attorneys'  
15 fees; and up to \$20,000.00 for reimbursement of litigation costs. Defendant agrees to not oppose Class  
16 Counsel's request for attorneys' fees and costs in these amounts. Defendant will not oppose a request for  
17 attorneys' fees up to one-third of the GSA or a request for litigation costs and expenses of up to  
18 \$20,000.00, but retains the right to oppose and requests above these amounts. The terms of this Settlement  
19 Agreement will not be abrogated and will continue in full force even if the Court awards a lower amount  
20 of attorneys' fees or costs than requested by Class Counsel. Any unapproved amount of attorneys' fees  
21 and litigation costs will be added to the NSA and be distributed to the Settlement Class Members.

22 **6. Enhancement Award.**

23 Class Counsel shall request an Enhancement Award of up to Seven Thousand Five Hundred  
24 Dollars (\$7,500) for Plaintiff. Defendant retains the right to object to an Enhancement Award in excess  
25 of this amount. Any unapproved amounts will be added to the NSA and be distributed to the Settlement  
26 Class Members.



1           **7. PAGA Award**

2           Subject to Court approval, \$35,000 shall be attributed to Plaintiff's claims under PAGA. The  
3 Settlement Administrator shall apportion and distribute the \$35,000 payment as follows: (a) \$26,250.00  
4 shall be paid to the LWDA as its 75% share of the settlement of civil penalties for PAGA claims; and (b)  
5 \$8,750.00 shall be added to the NSA and distributed to the Settlement Class Members as their 25% share  
6 of the settlement of civil penalties for PAGA claims.

7           **8. Costs of Settlement Administration.**

8           The Parties have mutually agreed to the selection of CPT ("Settlement Administrator"), to  
9 undertake the administration of the Settlement in this Action. The Parties estimate that the costs and  
10 expenses of administration of the settlement will not exceed \$30,000.

11           **9. Calculation of the NSA and Distribution of Settlement Proceeds.**

12           **9.1.1** This settlement is a "non-claims-made" settlement. Each Settlement Class Member will be  
13 entitled to a share of the NSA in accordance with the formula set forth below. Payments will be made  
14 from the NSA only to Settlement Class Members, as set forth herein.

15           **9.1.2** Each Settlement Class Member will be paid a portion of the NSA in accordance with the  
16 following formula: Each Settlement Class Member's potential share of the NSA will be calculated by  
17 dividing the number of credits taught by the Settlement Class Member during the Class Period as an  
18 adjunct instructor ("Credits") by all the number of credits taught by all Settlement Class Members as an  
19 adjunct instructor in California during the Class Period, and then multiplying the resulting figure by the  
20 NSA. Zero-credit courses will be treated as one-credit courses for the purposes of this calculation.  
21 Settlement Class Members' credits will be weighted as follows: the credits taught as part of a course that  
22 was solely online will be reduced by one-quarter (i.e. they will be multiplied by 0.75).

23           **9.1.3** The amount distributed to Settlement Class Members, plus all required withholdings, shall  
24 not exceed the NSA.

25           **9.1.4** If a Class Member timely and validly submits a Request for Exclusion, as set forth herein,  
26 his or her share will return to the NSA and will be distributed to the remaining Settlement Class Members.

27           **9.2** Payments to Class Members pursuant to this Settlement Agreement will not be construed as  
28 compensation for purposes of determining eligibility for or benefit calculations of any health and welfare

1 benefit plan, retirement benefit plan, vacation benefit plan, unemployment compensation, including,  
2 without limitation, all plans, subject to Employee Retirement Income Security Act ("ERISA"). The  
3 Parties agree these payments do not represent any modification of any employee's previously-credited  
4 hours of service or other eligibility criteria under any employee pension benefit plan, employee welfare  
5 benefit plan, or other program or policy.

6 **9.3** Five (5) business days after the Final Effective Date, APU shall direct the Escrow Holder to  
7 release the funds from the Escrow Account in an amount equal to the amount owed to pay (1) Class  
8 Members per the terms of the final settlement agreement, as approved by the Court; and (2) court approved  
9 attorney's fees, costs, the PAGA payment, Settlement Administration Costs, escrow account and other  
10 administration costs, and incentive payments. In addition, APU will direct the release of the interest  
11 accrued in the Escrow Account, which shall be distributed to Settlement Class Members. These funds  
12 will be released into an interest-bearing account, through the Settlement Administrator. Any interest born  
13 on this account will also be distributed to the Settlement Class.

14 **9.4** Within ten (10) calendar days of the Final Effective Date, the Settlement Administrator will  
15 pay all Class Members' settlement shares, and attorney's fees, costs, enhancement payments, and  
16 administration costs, as approved by the Court.

17 **9.5** Class Member Payment Checks that are not cashed within one hundred and eighty (180)  
18 calendar days from the date of issuance by the Settlement Administrator, will be cancelled. Class  
19 Members whose Class Member Payment checks are not timely cashed and which are cancelled, will be  
20 deemed to have irrevocably waived any right in or claim to any payment under the Settlement, but the  
21 settlement and their release of Released Claims will remain binding upon them. The value of the cancelled  
22 Class Member Payment checks will be transmitted in conformity with California Civil Procedure Code  
23 section 384, as follows: one-hundred percent (100%) to the non-profit organization Interdisciplinary  
24 Center for Healthy Workplaces.

25 **9.6** Neither Plaintiff nor Defendant shall bear any liability for lost or stolen checks, forged  
26 signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of  
27 omission or commission, the same is true for the Settlement Administrator.  
28

1           **10. Tax Treatment.**

2           **10.1 Tax Treatment of Class Member Payments:** 30% of each Settlement Payment will be  
3 allocated as wages and reported on an IRS Form W-2; 50% will be allocated as penalties and interest and  
4 reported on IRS Form 1099, and 20% will allocated to the non-wage and hour claims and shall be reported  
5 to the extent required.

6           **10.2 Employer's Portion of Payroll Taxes:** Defendant shall pay the employer's portion of payroll  
7 taxes with respect to the wage portion of Class Member Payments separately and in addition to the GSA.

8           **10.3 Tax Treatment of Service Award:** Plaintiff will receive an IRS Form 1099 for her individual  
9 Service Award and will be responsible for payment of any taxes owing on said amount.

10           **10.4 Tax Treatment of Attorneys' Fees and Cost Award:** Class Counsel will receive an IRS Form  
11 1099 for any amount awarded to Class Counsel in the form of attorneys' fees or costs and will be  
12 responsible for payment of any taxes owing on said amount.

13           **10.5 No Tax Advice:** Neither Plaintiff nor Defendant, nor the parties' attorneys, shall give or are  
14 giving any tax advice in connection with the settlement or any payments to be made pursuant to this  
15 settlement. Each Settlement Class Member agrees to indemnify, and hold harmless Defendant from any  
16 liability for taxes, fees, costs, or assessments resulting from his or her failure to timely pay his or her  
17 share of taxes, interest, fees, or penalties owed.

18           **11. Notice Administration.**

19           **11.1.1**       Within twenty (20) calendar days of the later of the Preliminary Approval Order or  
20 court approval of settlement notice to the class Defendant shall provide the Settlement Administrator with  
21 the following information ("Class Data List"):

22                   (a) the names, employment identification number, last known addresses, last known telephone  
23 numbers, and Social Security numbers of each Class Member;

24                   (b) the number of Credits being attributed to each Class Member, as calculated based on the  
25 formula set forth in Section 9.1.2.

26           **11.1.2**       Upon its receipt of the Class Data List, the Settlement Administrator shall access the  
27 National Change of Address ("NCOA") Database, and update the addresses contained therein.  
28

1           **11.1.3**        Within thirty-five (35) days of the later of the Preliminary Approval Order or court  
2 approval of settlement notice to the class, the Settlement Administrator shall provide the Class Notice by  
3 bulk first class mail, forwarding requested, to the Class Members at the addresses identified through the  
4 process described above.

5           **11.1.4**        As to any Class Notices that are returned as undeliverable, or where the NCOA  
6 Database indicates that the last known address of any Class Member is invalid or otherwise undeliverable,  
7 the Settlement Administrator will perform a skip trace procedure and re-mail all returned, undelivered  
8 mail within five (5) calendar days of the date on which the Settlement Administrator is informed that a  
9 Class Notice is undeliverable or otherwise invalid.

10          **11.1.5**        Other than the obligations set forth in this Settlement Agreement, Parties will have  
11 no additional obligation to identify or locate any Class Member.

12          **11.1.6**        Parties will not be responsible for nor have any liability in connection with the  
13 provision of Class Member data to the Settlement Administrator, outside of the obligations set forth in the  
14 Settlement Agreement. The Settlement Administrator and all those working through, in concert with, or  
15 on behalf of the Settlement Administrator, shall be obligated to take all reasonable steps to maintain the  
16 confidentiality of Class Member information and to carry out the other duties enumerated in the Settlement  
17 Agreement, including calculating each Class Member's potential share of the Settlement.

18          **11.1.7**        The Settlement Administrator shall provide Defendant's counsel and Class Counsel  
19 with weekly summary reports, including the total number of Class Notices that were returned as  
20 undeliverable, the total number of objections, and disputes regarding Credits, and/or Requests for  
21 Exclusion. The Settlement Administrator shall maintain records of its work, which will be available for  
22 inspection upon request by Defendant's counsel.

23            **12. Class Notice and Notification of Credits.**

24          **12.1**        The Class Notice will be a pre-printed notice, in substantially the form attached hereto as  
25 **Exhibit A** and to be approved by the Court. In addition to other information contained on the Class  
26 Notice, the Class Notice will state the number of Credits that the Class Member worked as a Visiting  
27 Professor or adjunct instructor in California during the Class Period for Defendant, according to  
28 Defendant's records.

1           **13. Request for Exclusion.**

2           **13.1** Any Class Member may elect to opt out of the Settlement by submitting a written Request  
3 for Exclusion from the Settlement to the Settlement Administrator, postmarked no later than the Response  
4 Deadline. The Request for Exclusion must contain the following: the Class Member's full name,  
5 signature, address and last four digits of his or her social security number, and a clear statement that he or  
6 she seeks to be excluded from the Settlement. The Settlement Administrator shall immediately send all  
7 Requests for Exclusion to Defendant's counsel and Class Counsel. A Class Member who fails to comply  
8 with the opt out procedure set forth herein on or before the Response Deadline will not be excluded and  
9 will instead be bound by all provisions of the Settlement Agreement and all orders issued pursuant thereto.

10           **13.2** Any Class Member who elects to opt out of the Class in the manner and within the time limits  
11 specified above and in the Class Notice: (1) will not have any rights under the Settlement Agreement; (2)  
12 will not be entitled to receive any compensation under the Settlement Agreement; (3) will not have  
13 standing to submit any objection to the Settlement Agreement; and (4) will not be bound by the Settlement  
14 Agreement.

15           **13.3** Except for persons who elect to opt out of the Settlement in the manner and within the time  
16 limits specified above, in the Preliminary Approval Order, and in the Class Notice, all Class Members,  
17 will be deemed to be within the Class for all purposes under this Settlement Agreement, will be bound by  
18 the terms and conditions of this Settlement Agreement, including all orders issued pursuant thereto.

19           **13.4** If the Settlement Agreement is given final approval, it will operate as a full, complete, and  
20 final release of all the Released Claims of the Class Representative and all Settlement Class Members,  
21 and as an effective covenant not to sue.

22           **14. Objections.**

23           Any Class Member who does not request exclusion from the Settlement may object to the  
24 Settlement Agreement by sending the Settlement Administrator, not later than the Response Deadline, a  
25 written statement objecting to the Settlement. The written objection must contain: the Class Member's  
26 full name, address, last four digits of his or her social security number, the case name and number of the  
27 Action, and a clear statement of the basis for his or her objection. The Settlement Administrator shall  
28 immediately send all objections to counsel for Defendant and Class Counsel.

1 Counsel for the Parties shall file any responses to any objections at the time the Motion for Final  
2 Approval is filed. Class Members may, prior to the Final Approval Hearing, withdraw their objections or  
3 opt out requests in a writing to the Settlement Administrator, which may then be filed with the Court.

4 All Parties and their counsel will not seek to solicit or otherwise encourage any Class Member to  
5 submit an opt out request or objection, nor encourage any Class Member to appeal from the final judgment.

6 **15. Resolution of Disputes.**

7 If a Class Member timely disputes the number of Credits listed on his or her Class Notice, the  
8 dispute will be submitted to the Settlement Administrator, who will examine the records and either verify  
9 the calculation or provide a corrected calculation. Disputes must be in writing that is submitted to the  
10 Settlement Administrator, postmarked on or before the Response Deadline. The dispute must contain:  
11 Class Member's full name, address, signature, and last four digits of his or her Social Security number;  
12 and any facts supporting the Class Member's dispute, along with any supporting materials confirming that  
13 the Credits attributed to him or her are incorrect. The Settlement Administrator's determination of disputes  
14 will be final and non-appealable.

15 **16. Non-Materiality of Attorneys' Fees, Costs and Enhancement Awards.**

16 Any denial or reduction in amount by the Court of the application for attorneys' fees and litigation  
17 costs, Enhancement Awards, and/or Settlement Administration Costs will in no way affect the validity the  
18 remainder of this Settlement Agreement, or give rise to a right to abrogate this Settlement Agreement.

19 **17. Released Claims:** Each member of the Settlement Class releases Released Parties from any  
20 and all claims, debts, liabilities, demands, obligations, penalties, premium pay, guarantees, costs, expenses,  
21 attorney's fees, damages, actions or causes of action of whatever kind or nature, whether known or unknown,  
22 contingent or accrued, under any legal theory under state law for any alleged failure to pay all business  
23 expense reimbursements, wages due (including minimum wage and overtime wages), failure to pay for all  
24 hours worked (including off-the clock), failure to provide meal and authorize and permit rest periods,  
25 short/late meal and rest periods, failure to relieve of all duties during meal and rest periods, failure to timely  
26 pay wages and final wages and waiting time penalties, failure to furnish accurate wage statements including  
27 claims derivative and/or related to these claims, liquidated damages, and conversion of wages, up to and  
28 including the date of preliminary approval by the Court. This Release shall include, claims that were raised,

1 or that reasonably could have been raised based on the facts and allegations in the Complaint. This Release  
2 shall include all claims and theories arising under the applicable regulations, Labor Code section 2802, Wage  
3 Orders and Labor Code, state wage and hour law, as well as claims under Business and Professions Code  
4 section 17200 *et seq.*, and/or Labor Code section 2698 *et seq.* based on violations of the above Labor Code  
5 provisions. This release shall apply to all claims arising at any point during the Class Period.

6 **17.1 Plaintiff's General Release:** In addition to the Released Claims, Plaintiff shall be bound by  
7 a complete and general release of all claims under any and all applicable federal and state laws and/or  
8 regulations as to Released Parties, and shall also be bound by a California Civil Code section 1542 release  
9 and waiver of all claims known and unknown, without exception, except as may be prohibited by law,  
10 such as claims for workers' compensation benefits. California Civil Code section 1542 reads as follows:

11 "A general release does not extend to claims that the creditor or releasing party does not know or  
12 suspect to exist in his or her favor at the time of executing the release and that, if known by him  
13 or her, would have materially affected his or her settlement with the debtor or released party."

14 **18. Application for Preliminary Approval.**

15 **18.1** After the Parties' execution of this Settlement Agreement, Plaintiff shall file a motion for  
16 preliminary approval of the Settlement, requesting a Preliminary Approval Order that contains the  
17 following provisions:

18 **18.1.1** preliminarily approving the Settlement Agreement and its terms;

19 **18.1.2** preliminarily approving and certifying the Class for settlement purposes only;

20 **18.1.3** approving the form of the Class Notice, and finding that the proposed method of  
21 disseminating the Class Notice meets the requirements of due process and is the best notice practicable  
22 under the circumstances;

23 **18.1.4** establishing the procedures and the deadline by which Settlement Class Members  
24 may assert objections to the Settlement, seek exclusion from the Settlement, and/or dispute their  
25 Settlement Shares; and

26 **18.1.5** setting a date for the Final Approval Hearing.  
27  
28

1           **18.2** Counsel for Defendant will be given three (3) full business day to review and comment on  
2 the motion for preliminary approval of the Settlement prior to its being filed with the Court, and such  
3 comments will be implemented to the extent reasonable.

4           **19. Final Approval Order and Final Judgment.**

5           **19.1** If the Settlement is preliminarily approved by the Court, the Parties shall thereafter request  
6 that the Court enter an order granting final approval of the Settlement and judgment based thereon (“Final  
7 Approval Order and Judgment”), which includes the following provisions:

8           **19.1.1**       confirming certification of the Class for settlement purposes only;

9           **19.1.2**       finding that the dissemination of the Class Notice in the form and manner ordered by  
10 the Court was accomplished as directed, met the requirements of due process; and

11           **19.1.3**       finally approving the Settlement Agreement and the Settlement as fair, reasonable  
12 and adequate and directing consummation of the Settlement in accordance with its terms and provisions;

13           **19.1.4**       directing the Parties to implement the terms of the Settlement Agreement;

14           **19.1.5**       releasing and discharging the Released Parties from any and all liability with respect  
15 to the Released Claims as hereinabove provided;

16           **19.1.6**       resolving and settling all the Released Claims by the Class Representative and all  
17 Settlement Class Members, as herein above provided, with the release precluding them from instituting,  
18 commencing, or continuing to prosecute, directly or indirectly, as an individual or collectively,  
19 representatively, derivatively, or on behalf of himself or herself, or in any other capacity of any kind  
20 whatsoever, any action in this Court, any other state court, or any arbitration or mediation proceeding or  
21 any other similar proceeding, against any of the Released Parties, that asserts any Released Claims.

22           **19.1.7**       awarding reasonable attorneys’ fees and litigation costs to Class Counsel as  
23 determined by the Court;

24           **19.1.8**       awarding an Enhancement Award to Class Representative as determined by the  
25 Court;

26           **19.1.9**       awarding Settlement Administration Costs to the Settlement Administrator as  
27 determined by the Court and other administration costs as provided herein;

28           **19.1.10**      approving the allocation of PAGA Penalties to the LWDA;



1           **19.1.11**      entering final judgment on the Complaint; and

2           **19.1.12**      preserving continuing and exclusive jurisdiction over all matters related to the  
3 administration and consummation of the terms of this Settlement and enforcement of the Judgment.

4           **19.2**      Counsel for Defendant will be given an opportunity to comment on the motion for final  
5 approval of the Settlement prior to its being filed with the Court, and such comments will be implemented  
6 to the extent reasonable.

7           **20. Effect of Settlement Not Being Final.**

8           In the event that the Settlement does not become final, then the Settlement Agreement will become  
9 null and void, and all negotiations, proceedings, and statements relating thereto will be without prejudice  
10 as to the rights of any and all Parties hereto, and all Parties and their respective predecessors and successors  
11 will be deemed to have reverted to their respective positions in the Action as of the date and time  
12 immediately prior to the execution of this Settlement Agreement. If the Court does not approve either  
13 preliminarily or finally any material term or condition of the Settlement Agreement, or if the Court effects  
14 a material change to the Parties' settlement (including but not limited to the scope of release to be granted  
15 by Class Members or the binding effect of the Settlement on Class Members), the Parties shall work  
16 together in good faith to address any concerns raised by the Court and propose a revised Settlement for  
17 the Court's approval.

18           **21. Amendment to the Complaint and PAGA Notice.**

19           Plaintiff agrees to amend her First Amended Complaint to add a claim for failure to provide meal  
20 breaks and for waiting time penalties, and any other claims and theories encompassed by the settlement  
21 to ensure that all included claims and theories are clearly articulated and covered. Plaintiff also agrees to  
22 amend her PAGA Notice to include a claim for failure to provide meal breaks and for waiting time  
23 penalties, and any other claims and theories encompassed by the settlement to ensure that all included  
24 claims and theories are clearly articulated and covered.

25           **22. Withdrawal From Settlement Based on Requests for Exclusion.**

26           Defendant shall retain the right, in the exercise of its sole discretion, to nullify the Settlement in the  
27 event that more than ten percent (10%) of the Class Members opt out. Defendant must provide written  
28 notice to Class Counsel of its withdrawal within thirty (30) calendar days of the Response Deadline. All

1 signatories and their counsel agree not to encourage opt-outs. Class Counsel and APU specifically agree  
2 not to solicit opt-outs, directly or indirectly, through any means. If Defendant exercises this right, it shall  
3 be solely responsible for the costs incurred for settlement administration up to the date of nullification.

4 **23. Escalator Clause.**

5 The parties agree that if the number of Settlement Class members exceeds 1,832 by more than six  
6 percent (6.0%), the Gross Settlement Amount will be increased proportionately for each additional  
7 Settlement Class Member above the six percent (6.0%) threshold. For example, if the number of  
8 Settlement Class members increases by ten percent (10%), the Gross Settlement Amount shall be  
9 increased by four percent (4%).

10 **24. No Admissions.**

11 The Parties understand and agree that this Settlement Agreement is the result of a good faith  
12 compromise settlement of disputed claims, and no part of this Settlement Agreement, or any conduct or  
13 written or oral statements made in connection with this Settlement and this Settlement Agreement,  
14 including the unfinished Memorandum of Understanding, whether or not the Settlement is finally  
15 approved and/or consummated, or the negotiations leading to the Settlement Agreement, or any document  
16 filed in support thereof, should be construed as an admission or concession of any kind by Defendant or  
17 any of the Released Parties.

18 **25. Avoidance of Undue Publicity.**

19 Except as required to obtain preliminary or final approval in this case, Plaintiff and class counsel  
20 agree not to publicize the amount or other terms of this settlement to any person. Nothing herein will  
21 restrict Class Counsel from including publicly available information regarding this settlement in future  
22 judicial submissions regarding Class Counsel's qualifications and experience.

23 **26. Non-Disparagement**

24 Released Parties agree that all inquiries about Plaintiff shall be referred to Human Resources, who  
25 will confirm the Plaintiff's dates of employment, last salary, and position held. No other information  
26  
27  
28

1 concerning Plaintiff's work history will be provided by Human Resources without authorization from  
2 Plaintiff.

3 **27. Construction.**

4 This Settlement Agreement was entered into after substantial good faith, arm's-length negotiations  
5 between the Parties. This Settlement Agreement has been entered into without any coercion and under no  
6 duress. The Parties acknowledge and agree that all Parties had an equal hand in drafting this Settlement  
7 Agreement so that it will not be deemed to have been prepared or drafted by one party or another.

8 **28. Due Authority of Attorneys.**

9 Each of the attorneys executing this Settlement Agreement on behalf of one or more Parties hereto  
10 warrants and represents that he or she has been duly authorized and empowered to execute this Settlement  
11 Agreement on behalf of each such respective Party and to bind them to the terms hereof. The parties also  
12 warrant that this Agreement is entered into knowingly and willingly and there is no fraud, duress, or undue  
13 influence.

14 **29. Entire Agreement.**

15 This Settlement Agreement (including Exhibits hereto) sets forth the entire agreement of the  
16 Parties with respect to its subject matter and supersedes any and all other prior agreements and all  
17 negotiations leading up to the execution of this Settlement Agreement, whether oral or written, regarding  
18 the subjects covered herein. The Parties acknowledge that no representations, inducements, warranties,  
19 promises, or statements relating to the subjects covered herein, oral or otherwise, have been made by any  
20 of the Parties that are not embodied or incorporated by reference herein. Except as otherwise set forth in  
21 this Agreement, any notice, order, judgment, or other exhibit that requires approval of the Court must be  
22 approved without material alteration that substantially changes or increases the cost of compliance with  
23 this Settlement Agreement in order for this Settlement Agreement to become effective. Before invoking  
24 this provision to challenge the effectiveness of this Settlement Agreement, the invoking party shall consult  
25 with, and if necessary mediate in good faith with, the other party in an effort to resolve any such challenge.

26 **30. Modification or Amendment.**

27 This Settlement Agreement may not be modified or amended except in a writing signed by all  
28 signatories hereto or their attorneys or their successors in interest.

1           **31. Successors.**

2           This Settlement Agreement will be binding upon and inure to the benefit of the Parties hereto and  
3 their respective heirs, executors, administrators, successors and assigns, and upon any corporation,  
4 partnership or other entity into or with which any Party hereto may merge, combine, or consolidate.

5           **32. Counterparts.**

6           This Settlement Agreement may be executed in counterparts, each of which will be deemed an  
7 original, and all of which together will constitute one and the same instrument.

8           **33. Waivers.**

9           The waiver by any Party of any breach of this Settlement Agreement will not be deemed or  
10 construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this  
11 Settlement Agreement.

12           **34. Governing Law.**

13           This Settlement Agreement will be governed by and construed, enforced, and administered in  
14 accordance with the internal laws of the State of California.

15           **35. Headings.**

16           The headings contained in this Settlement Agreement are for convenience and reference purposes  
17 only, and will not be given weight in its construction.

18           **36. Notices.**

19           Any notices, requests, demands, or other communications required or permitted to be given  
20 pursuant to this Settlement Agreement, other than the contemplated Class Notice to the Class Members,  
21 must be in writing and mailed as follows:

22           **36.1** To Class Counsel to the attention of Julian Hammond, Esq., HammondLaw, P.C., 1829  
23 Reisterstown Road, Suite 410, Baltimore, Maryland 21208; Telephone: (310) 601-6766.

24           **36.2** To Defendant and counsel for Defendant, to the attention of Andrew McNaught, Esq.,  
25 Seyfarth Shaw, 560 Mission Street, Suite 3100, San Francisco, CA 94105-2930; Telephone: (415) 544-  
26 1022.





